

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8121 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAFULBHAI HIMMATLAL SHAH

Versus

COMMISSIONER OF POLICE

Appearance:

MR MJ DAGLI for Petitioner
MR.N.D.GOHIL, LD.ASST.GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/03/99

ORAL JUDGEMENT

1. The petitioner through this petition under Article 226 of the Constitution of India has challenged the detention order, dated 1.8.98 passed by the Police Commissioner, Ahmedabad city under section 3(2) of the Prevention of Antisocial Activities Act (for short "PASA"), and has prayed for quashing and setting aside

the said order and has also prayed that he may be immediately released from illegal detention.

2. It seems from the grounds of detention that on account of registration of one case under Bombay Prohibition Act and from the statements of two confidential witnesses that the detaining authority reached subjective satisfaction that the petitioner is a "bootlegger", and his activities are prejudicial for maintenance of public order. With this subjective satisfaction the detention order was passed which has been challenged in the course of arguments only on one ground that the activities of the petitioner can not be termed as prejudicial for maintenance of public order.

3. The above contention implies that the subjective satisfaction of the detaining authority that the petitioner is a "bootlegger" is not challenged. It could not be challenged for the obvious reason that registration of one case under Bombay Prohibition Act shows that 303 bottles of foreign liquor and beer worth Rs.23,240/- were recovered and further two confidential statements of witnesses narrated the bootlegging activities of the petitioner. The petitioner was therefore rightly declared to be "bootlegger" under section 2(e) of PASA.

4. However, a person may be a bootlegger within the meaning of section 2(b) of PASA can be detained under this Act only when his activities were found prejudicial for maintenance of public order. Reference to huge quantity, namely, 303 bottles of foreign liquor on account of which a case under Bombay Prohibition Act registered can not be the criteria for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. Something more is required showing that the activities of the petitioner at the time of his search and seizure were prejudicial for maintenance of public order. On this point, nothing is disclosed in the grounds of detention, and hence, the registered offence under Bombay Prohibition Act can not be pressed in service for holding that the activities of the petitioner were prejudicial for maintenance of public order.

5. Then remains the statements of two confidential witnesses. That first witness has stated about the incident dated 13th July, 1998 at 9.00 a.m. When the petitioner in the company of his two companions went to the residence of the witness and asked him to keep and store his stock of foreign liquor in his house the

witness refused due to which the petitioner got excited and caught hold of his collar and draggd him and beat him. His companions also gave severe beating to the witness, knife was shown to the witness. The witness was threatened on account of which he shouted for help and nearby people gathered and they were also threatened and chased with knife. This incident can hardly be said to be prejudicial for maintenance of public order. Some beating of the witness can not be said to have created fear of alarm or danger in the locality orin the minds of public of the locality. No doubt, the crowd was chased by the petitioner and his companions but that was with a view to disperse them and not to cause any injury to them and not to create fear or sense of alarm in their mind. This incident therefore can not be said to be prjeudicial for maintenance of public order.

6. The second witness has stated abut the incident, dated 4.7.98 at 6.00 a.m. when the petitioner was doing business of transfer of liquor and beer from his vehicle near Jain Derasar, a religious place of Jain community. The witness objected. Nothing further was stated by the witness as to what happened after his protest to the petitioner. As such mere carrying of business near religious place of Jain community can not be called as activity prjudicial for maintenance of public order. On similar facts, this court (presided over by me) in SCA No.7586/98 decided on 24.12.998 observed that such activity if carried near a mosque, a religious place of muslim community does not amount to creating situation prejudicial for maintenance of public order. In SCA No.7989/98 decided by this court (presided over by me) today, i.e. on 10.3.99 same view has been taken that if such activities are noticed near a temple it can not be said to be prejudicial for maintenance of public order.

7. Same witness has stated about another incident which took place on the same day, i.e. on 4.7.98 at about 12 O'clock in the noon. This incident also can not be said to have created situation prejudicial for maintenance of public order.

8. From the aforesaid material it can be said that th activities of the petitioner were not prejudicial for maintnance of public order. Hence, the impugnd order of detention is to be held illegal and therefore the same is required to be quashed and set aside.

9. In the resutlt, this writ petition succeeds and the same is hereby allowed. The impugned order, dated 1.8.98 is hereby quashed and set aside. The petitioner

shall be released forthwith unless he is wanted in
someother case.

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